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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MEGA INTERNATIONAL COMMERCIAL BANK CO., LTD., Plaintiff and Respondent, v. SHE-YING CHING WANG, Defendant and Appellant.	B210318 (Los Angeles County Super. Ct. No. BC365780)

APPEAL from a judgment of the Superior Court of Los Angeles County. Elihu M. Berle, Judge. Affirmed.

Shiang Law Firm, William L. Hsiang for Defendant and Appellant.

Frandzel Robins Bloom & Csato, Thomas M. Robins III, Michael Gerard Fletcher, Hal D. Goldflam; Law Offices of Maan-Huei Hung, Maan-Huei Hung for Plaintiff and Respondent.

A bank has sued a loan guarantor after the borrower defaulted on its payments. Trial was by the court, which found in favor of the bank and against the guarantor. We find no error and affirm the judgment.

FACTS

In September 2000, Chiao Tung Bank loaned China Rebar Company, Ltd. (Rebar) eight hundred million New Taiwan dollars (the loan).[1] The loan is secured by Rebar's real property and stocks. Apart from Rebar's collateral, the loan is guaranteed by several "joint debtors and joint guarantors." Appellant She-Ying Chin Wang is a joint guarantor named in the loan contract.

The loan contract sets forth the duties of the guarantors. Article 26 states, "For all debt obligations incurred under the Contract, the joint guarantors will assume the same debt obligations as [Rebar] and each will have full pay off responsibilities towards [the Bank]." Article 27 reads, "If [Rebar] fails to perform the provisions of the Contract, the joint guarantors shall immediately and jointly pay off the debts and compensate [the Bank] for losses suffered as a result of [Rebar's] non-performance of the Contract. [The Bank] may directly demand compensation from the joint guarantors without first seeking compensation from collateral or from guaranties provided by [Rebar] or a third party."

Appellant Wang was the chairperson of Rebar. Wang was in charge of the board of directors, but did not handle Rebar's daily operations; financial matters were generally handled by a manager, though the loan from the Bank was approved by Rebar's board of directors. As a condition of making the loan, the Bank required that Wang act as guarantor. Wang believes that Rebar's debt to the Bank is covered by Rebar's collateral, which includes cement factories, mines, machinery, and stocks.

In deposition testimony, Wang confirmed that her signature is on the loan contract. Asked at trial if she had ever seen the loan contract, Wang replied, "I don't remember." However, when asked to look at the last page of the contract, Wang said, "It looks like

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[1] Respondent Mega International Commercial Bank is the successor-in-interest following a merger. We refer to the lender in this opinion as "the Bank."

my signature." Rebar's manager asked her to sign the loan contract. She did not look at the entire document before signing it. Wang testified that her signature on the loan contract served only as a verification: she claims she did not sign as guarantor of the loan.

Wang confirmed that the personal seal on the loan contract "is mine." That said, Wang was sure that she did not place her seal on the loan contract "because the stamp was not kept by me." Wang testified that her personal seal was kept by Rebar's financial department to facilitate business activities. She described Rebar's possession of her personal seal as "a custom, a tradition, in doing business . . . this way," and she described the employees who had custody of her seal as "honest." Wang never objected to Rebar's use of her seal.

Wang signed an agreement with the Bank in 1999, stating that when her seal is used on any credit agreement, letter of joint guarantor or other document, it is deemed that she personally placed the seal on the document and is willing to be liable for the legal responsibilities set forth in the document. An exemplar of Wang's seal is stamped on the 1999 agreement. Bank vice-president Ching N-Pong testified that all individuals in Taiwan have personal seals, and that Wang's seal is on the loan contract and is also on the nine amendments to the original loan contract. One of Pong's duties was to ensure that the seal on the loan contract is the same as the seal on the 1999 agreement regarding usage of Wang's seal. The Bank has never had possession of Wang's personal seal. Wang confirmed that her signature is on the fourth through ninth amendments to the loan contract.

In August 2006, a meeting was attended by Rebar's institutional creditors, at which time Rebar proposed that the creditors reduce interest rates and extend the terms of Rebar's existing loans. The minutes of this meeting state, "It is sincerely hoped that each creditor bank will continue its past supportive attitude in providing assistance by taking a unanimous step to form the foundation for signing approval of this resolution. This will help [Rebar and associated companies] to overcome their current financial hardships."

Bank vice-president Pong, who attended the meeting, testified that the Bank did not agree to the proposal and did not approve a loan extension or interest rate reduction. Wang did not attend the meeting. There is no written agreement between the Bank and Rebar evidencing a loan modification arising from the 2006 meeting.[2]

In October 2006, Rebar missed an interest payment on the loan. Pong spoke to Rebar's finance managers about the missed payment, and was assured that the arrearage would be paid. In December 2006, the Bank learned that Rebar had filed reorganization proceedings in Taiwan. No payments of principal or interest have been made on the loan since that time. By the time of trial in January 2008, the unpaid balance on the loan (principal and interest) was 728,045,000 New Taiwan dollars.[3] During the trial in this case, the Bank was in the process of foreclosing on the collateral securing Rebar's loan.

Testimony was offered by an expert in Taiwanese law, Hsiao Ling Fan, who is a partner in a Taiwanese law firm, teaches at a law school in Taiwan, has an LLM from two law schools in the United States, and is licensed to practice in New York. Fan testified that under Taiwanese law, an individual's personal seal or "chop" "has the same effect as the personal signature." Fan also testified that the concept of consideration does not exist in Taiwan. Instead, under the Taiwan Civil Code, "a contract is formed as long as the parties reciprocally reach mutual consent to the essential elements of the contract. No consideration is required."

The loan contract lists appellant Wang as a "joint guarantor" and "joint obligor." Guarantors are recognized by Taiwanese law. According to Fan, "A joint guarantor is someone who assumes the liability the same as the principal debtor . . . so the creditor can have liability against the joint debtor and any of the joint guarantors simultaneously and

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[2] Wang refers to trial exhibit No. 30 (in Chinese) and its English translation in exhibit No. 30A. These are the minutes of the meeting, not an agreement to modify Rebar's loan.

[3] It was stipulated at trial that the parties would use the exchange rate published in the Wall Street Journal on the date of judgment to convert New Taiwan dollars into United States dollars. The exchange rate is roughly 3.3 Taiwan dollars to one U.S. dollar.

also successively." A creditor need not sue all joint obligors or guarantors at the same time, under Taiwanese law, as they are severally liable. Indeed, the creditor may pursue the joint guarantors immediately, without going after the original debtor first, because they are equally liable as the debtor. A joint guarantor may not compel a creditor to first exhaust collateral securing the loan before suing the guarantor. None of Fan's expert testimony on Taiwanese law was contested or refuted.

PROCEDURAL HISTORY

The Bank filed suit against Wang in February 2007, alleging a breach of contract and a common count for money paid. The Bank seeks to enforce Wang's guaranty of the loan. The complaint states that the Bank is qualified to conduct business in California, and that Wang is a resident of the county of Los Angeles. In its second amended complaint, the Bank claims the principal amount of US $20,105,939, plus interest from the date of default.

Relying upon a clause in the loan contract relating to litigation, Wang asked the trial court to quash service or dismiss the action on the grounds of forum non conveniens. The court denied the motion to quash, finding that Wang "has not met her burden to show that venue in Los Angeles is inconvenient and venue in Taiwan is convenient. Furthermore, the choice of forum clause does not require litigation in Taiwan. The clause merely states that Taiwan is the primary or first choice, but does not exclude other venues."

Wang filed a cross-complaint against the Bank. The Bank brought a motion to strike the cross-complaint pursuant to Code of Civil Procedure section 425.16, the "anti-SLAPP" statute. The trial court granted the Bank's motion on October 18, 2007. No appeal was taken from that order. The court also granted the Bank's request for a preliminary injunction preventing Wang from transferring or selling her stock in Omni Bank, where she served for 17 years on the board of directors.

THE TRIAL COURT'S RULING

Trial was by the court, which issued a lengthy statement of decision on June 27, 2008. The court found that the Bank made a loan to Rebar, and that Wang is a party to the loan contract as a "joint guarantor." Rebar defaulted on the loan, and the principal balance due is 663,496,000 New Taiwan dollars. The loan was negotiated, signed, and performed in Taiwan, the collateral for the loan is in Taiwan, and the parties to the loan are domiciled in Taiwan. Accordingly, the court applied the law of Taiwan to interpret the loan contract.

The court wrote, "the evidence at trial established that Defendant is named in the Loan contract as a 'joint guarantor.' This is set forth on the page of the Loan Contract containing the signatures and stamps," and an individual's seal is like a personal signature. The court rejected Wang's testimony that she did not place her seal on the loan contract and did not intend to be bound as a guarantor. Wang knew that Rebar had her personal seal, for use in business affairs: she authorized Rebar to use that seal on documents, and never objected to its use. Wang testified that she signed the loan contract when it was presented to her by Rebar's financial manager. No consideration was required under Taiwanese law for Wang's loan guaranty.

As a joint guarantor, Wang is jointly and severally liable for the debt. The Bank is entitled under Taiwanese law to proceed directly against a joint obligor, without first recovering against the principal debtor. Further, the loan contract expressly allows the Bank to recover from the joint guarantors without first exhausting the collateral securing the loan. Wang is not exonerated from liability due to the amendments made to the loan contract because she consented to each modification.

The court found that the Bank is entitled to recover the principal debt plus interest, for a total of 740,855,017 New Taiwan dollars. Using the conversion rate stipulated to by the parties, the court's judgment against Wang is for US $24,388,947. In addition, the Bank was awarded its contractual attorney fees. The court permanently enjoined Wang

from transferring her Omni Bank stock until the judgment was satisfied. Judgment was entered on June 27, 2008. Appeal was taken from the judgment on August 20, 2008.

DISCUSSION

1. Forum

Article 10 of the loan contract relates to litigation between the parties.[4] Citing Article 10, Wang sought to quash service or dismiss the action, arguing that the parties are contractually required to resolve their dispute in the courts of Taiwan. The Bank responded that Article 10 relates to venue, not jurisdiction. Further, it argued that the court should permit suit to be brought here because Wang fled Taiwan under threat of prosecution and has no intention of returning to that country. The trial court denied Wang's motion to quash or dismiss. The order is reviewable on appeal after judgment. (Code Civ. Proc., § 906.)

The Bank contends that Article 10 does not mandate exclusive jurisdiction in Taiwan. In support of the Bank's position, a Taiwanese legal expert declared that Taiwan has only one court system; the country is not divided into states or other political subdivisions. The expert stated that although the English translation of Article 10 uses the word "jurisdiction," the contractual clause relating to litigation in this case "is in effect an agreement for the choice of venue" that only specifies the *location* of the trial court where disputes would be resolved: "In the context of an international dispute, where one of the parties to the contract has brought suit in another country, Article 10, dealing with the choice of venue among the courts making up the District Court system in Taiwan, would be irrelevant to the issue of whether the country has jurisdiction."

A venue clause is not the same thing as a forum selection clause: the former designates a particular county for the trial while the latter "chooses a court from among different states or nations." (*Alexander v. Superior Court* (2003) 114 Cal.App.4th 723,

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[4] Article 10 reads, "Should the Contract become involved in litigation, all signatories agree that the court in the area where [the Bank's] representative business office is located shall have the jurisdiction and be the court for primary trial. However, if the law provides a special jurisdiction the parties shall comply with such provision."

727.) The language of a forum selection clause "must be clear and unambiguous in designating a forum as exclusive and mandatory." (*CQL Original Products, Inc. v. National Hockey League Players' Assn.* (1995) 39 Cal.App.4th 1347, 1358.) This Court has held that forum selection clauses that afford jurisdiction without clearly making that jurisdiction *exclusive* are permissive, rather than mandatory: "'Additional language giving exclusive jurisdiction to the forum is required. Clauses which merely grant jurisdiction to a designated forum do not prohibit litigation in other appropriate fora. [Citations.] [¶] . . . [¶] A mandatory clause contains clear language showing that jurisdiction is appropriate in the designated forum and none other. [Citations.]" (*Berg v. MTC Electronics Technologies Co.* (1998) 61 Cal.App.4th 349, 360.) Article 10 of the loan contract does not specify that the courts of Taiwan have exclusive jurisdiction. There is no clear language indicating that jurisdiction lies only in Taiwan and nowhere else.

The trial court's denial of Wang's motion to quash is supported by (1) the lack of exclusivity language in Article 10, and (2) the unrefuted expert testimony that this clause only operates to place venue in a certain judicial district in Taiwan where the Bank's business office is located. Wang never argued in the trial court that Los Angeles is an inconvenient forum; therefore, we need not address the factors relevant to that issue. (See *Stangvik v. Shiley, Inc.* (1991) 54 Cal.3d 744, 751; Judicial Council com., Inconvenient Forum, 14A West's Ann. Code Civ. Proc. (2004 ed.) foll. § 410.30, pp. 486-487.)

2. <u>Choice of Law</u>

"Choice of law refers to the determination of which state's or other jurisdiction's law applies to a particular issue." (*Frontier Oil Corp. v. RLI Ins. Co.* (2007) 153 Cal.App.4th 1436, 1447.) The loan contract in this case does not specify what law applies in disputes between the contracting parties. The trial court determined that the law of Taiwan applies. Appellant contends that California law applies.

"Civil Code section 1646, by its express terms, prescribes a choice-of-law rule concerning the interpretation of contracts." (*Frontier Oil, supra,* 153 Cal.App.4th at p. 1449.)[5] The statute is "intended to give effect to the parties' presumed intention that the law of the place [where] a contract is to be performed should govern its interpretation." (*Id.* at p. 1450.) The "intended place of performance can be gleaned from the nature of the contract and its surrounding circumstances," and this presents a question of law, "except to the extent the answer may depend on the credibility of extrinsic evidence." (*Id*. at pp. 1450-1451.) "If the contract was negotiated and performed in the same place, that forum's law ordinarily applies." (*ABF Capital Corp. v. Berglass* (2005) 130 Cal.App.4th 825, 838.)

Wang does not dispute that the loan contract was negotiated, signed and entered into in Taiwan. Instead, she argues that the *place of performance* is in California. Wang's argument is untenable. Article 40 of the contract specifies that payments will be made at the Bank's place of business. There is no evidence that the parties ever contemplated that performance of any aspect of the loan contract would occur in California. On the contrary, Wang testified that "I have always regarded Taipei as my residential city"; the only reason she is in California is to avoid arrest in Taiwan. Under the circumstances, we must conclude that the contract was made in Taiwan and that the intended place of performance is in Taiwan. As a result, the law of Taiwan controls the interpretation of the loan contract.

3. <u>Dismissal of Wang's Cross-Complaint</u>

The trial court struck Wang's cross-complaint on the ground that it violates the anti-SLAPP statute. That order was directly appealable. (Code Civ. Proc., §§ 425.16, subd. (i), 904.1, subd. (a)(13).) Wang did not timely appeal, but is now challenging the ruling following entry of judgment. The Bank asked this Court to dismiss Wang's untimely challenge to the trial court's ruling on the anti-SLAPP motion. We granted the

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[5] Civil Code section 1646 reads, "A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made."

Bank's dismissal request on March 12, 2009; therefore, we shall not address Wang's arguments regarding the anti-SLAPP motion in this opinion.

4. <u>Trial Court's Finding That Wang Guaranteed the Loan</u>

Wang challenges the sufficiency of the evidence in support of the trial court's finding that she personally guaranteed the Bank's loan to Rebar. At trial, Wang testified that the signature on the loan contract is hers. In her brief, she quotes her own testimony, stating that she signed the loan contract "to verify" the document, but not as a guarantor. The trial court did not believe Wang's testimony.

The trial court was persuaded by the testimony of Bank executive Pong and by the contents of the loan contract itself. Pong testified that Wang's signature indicated agreement to the contract itself, and was not just for verification purposes. The Bank did not disburse the loan to Rebar until it received the signatures and seals of all the joint guarantors. On the loan contract, Wang's signature and seal appear on the final page, where she is described as a joint guarantor. The last line of the loan contract states that the "third party" (the term used to describe joint guarantors) has read and reviewed the entire contract including the clauses "concerning the rights and obligations of guarantors . . . and that, agreeing to them, they make their signatures and affix their seals."

Wang is a sophisticated businesswoman, chairing the Rebar board of directors and vice-chairing the board of directors of Omni Bank in Los Angeles. It strains credulity to believe that Wang signed a loan document guaranteeing 800 million Taiwan dollars without reading the document, or even reading the line preceding her signature, in which she agreed to assume all of the obligations of a guarantor. Further, Wang signed an agreement with the Bank in 1999, stating that whenever her seal is used on a document, it is deemed that she personally placed the seal and is willing to accept liability for responsibilities enumerated in the document. Thus, even if Wang did not affix her seal to the loan contract, she admittedly allowed Rebar to possess and affix her seal, and she never objected to the company's use of the seal. Under Taiwanese law, affixing a seal on a document has the same legal effect as a personal signature.

In sum, substantial evidence supports the trial court's finding that Wang signed the loan contract as a guarantor. Because the law of Taiwan requires only mutual consent to the element of a contract, the Bank did not have to prove—and the trial court did not have to find—that Wang's guaranty is supported by consideration.[6]

5. Amendments to the Loan Contract and Their Effect on Wang's Liability

Wang argues that she cannot be held liable on her guarantee of the loan contract because the loan was subsequently amended nine times. The court found that Wang "consented to each of the nine modifications, as exemplified by the placement of her seal on each of the modifications, and her signature on amendments 4-9." The court's finding is supported by substantial evidence: Wang testified that her seal is on all nine amendments and her signature is on the last six amendments: she thereby consented to be bound by the amendments to the original loan contract.

Wang also claims that the Bank agreed to extend the loan and grant interest rate concessions during a meeting attended by Rebar and its institutional creditors in August 2006. The trial court rejected this claim, and its finding is supported by substantial evidence. Pong testified that the Bank never agreed to a loan modification in 2006. There is no evidence of a written agreement modifying the loan in August 2006. At best, it was a proposal that was never approved.

6. Nonjoinder of Rebar and the Other Joint Guarantors

Wang contends that Rebar and the other joint guarantors who signed the loan contract must be joined in this lawsuit. She unsuccessfully demurred to the Bank's second amended complaint on the grounds that the pleading failed to join eight other joint guarantors as necessary or indispensable parties. The trial court's ruling is reviewable after judgment. (Code Civ. Proc., § 906.) The determination is a matter for the trial court's discretion. (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290,

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[6] In any event, a guaranty made at the same time as the original obligation does not require separate consideration. (Civ. Code, § 2792.)

1299; *Hayes v. State Dept. of Developmental Services* (2006) 138 Cal.App.4th 1523, 1529.)

Wang cites Code of Civil Procedure section 389 as authority.[7] At the outset, she makes no effort to establish that Rebar or the other joint guarantors—who are apparently all citizens of Taiwan—are "subject to service of process" in California. (*Id.*, subd. (a).) Even if we were to assume that Rebar and the other joint guarantors are subject to service of process, there is still no basis for requiring their joinder in this lawsuit: Wang must show that their absence will "leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations." (*Ibid*.) The issue is whether "substantial prejudice" will result to parties already before the court if an absent person is not joined. (*People ex rel. Lungren v. Community Redevelopment Agency* (1997) 56 Cal.App.4th 868, 874-876.)

At trial, the expert on Taiwanese law testified that a creditor need not sue all of the joint guarantors at the same time, as they are severally liable. A creditor may pursue the joint obligors without suing the principal debtor, because the guarantors are equally as liable as the debtor. A creditor may not be compelled to exhaust the collateral securing the loan before suing the guarantor. This testimony was unrefuted. In addition, Article 26 of the loan contract provides that "the joint guarantors will assume the same debt obligations as [Rebar] and *each* will have full pay off responsibilities toward [the Bank]."

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[7] "(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. [¶] (b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience, the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. . . ."

(Italics added.) And Article 27 of the loan contract allows the Bank to "directly demand compensation from the joint guarantors without first seeking compensation from collateral or from guaranties provided by [Rebar] or from a third party."

Thus, neither Rebar nor the other joint guarantors are indispensable parties. Taiwanese law and the loan contract expressly allow the Bank to proceed directly against any one of the guarantors without first (1) pursuing Rebar as the principal debtor; (2) pursuing the other joint guarantors; or (3) exhausting the collateral.[8] Wang's remedy is to pursue Rebar and the other guarantors in Taiwan, to share in their mutual obligation to repay the Bank.

7. Amount of Principal and Interest Awarded

Wang challenges the sufficiency of the evidence substantiating the amount of principal and interest awarded by trial court. The Bank's witness Pong gave testimony regarding the outstanding balance owed on the loan. Wang did not offer any contrary evidence regarding Rebar's loan payments; therefore, the trial court could accept Pong's testimony regarding the amount of the debt. On appeal, Wang does not direct us to any testimonial or documentary evidence showing that the amount of the debt is different from the amount specified by Pong in his testimony, or that the accrued interest is different from that calculated by the court.

8. Permanent Injunction

Wang asserts that the trial court violated her due process rights by issuing a permanent injunction prohibiting her from transferring ownership of her stock in Omni Bank. She observes that this relief was not requested in the Bank's pleadings or examined during the trial; therefore, she had no opportunity to show why the injunction should not issue.

Wang was afforded an opportunity to dispute the injunction. After the testimonial phase of the trial ended, the Bank filed a brief asking the court to permanently enjoin

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[8] Wang's reliance on a purported August 2006 loan amendment is unavailing, for the reasons stated in section 5, *ante*.

Wang from transferring her stock in Omni Bank. Wang did not respond. At a hearing on February 19, 2008, the court stated, "Now is the opportunity for presentation of any final argument." The Bank reiterated its request for an injunction. Wang's counsel did not respond to the Bank's request for an injunction, even after the court asked, "Anything else you want to tell me?"

The Bank submitted a proposed statement of decision to the court on April 30, 2008. Wang submitted written objections to the proposed statement of decision, complaining that she did not have an opportunity to address the proposed injunction during trial. The court heard argument on the proposed statement of decision on June 13, 2008. Wang's counsel argued that an injunction was not prayed for in the Bank's pleading, and was not addressed at trial, violating Wang's due process rights. The Bank responded that the injunction was an ancillary proceeding and a means of enforcing the judgment, not a substantive part of the Bank's lawsuit to enforce Wang's guarantee. The court invited further argument from the defense, but none was offered.

The trial court issued the injunction pursuant to Commercial Code section 8112, which entitles creditors "to aid from a court of competent jurisdiction, by injunction or otherwise, in reaching [a] certificated security . . ." to satisfy the creditor's claim. The statute is an enforcement mechanism for satisfying the judgment; therefore, it was not a matter to be tried in the main lawsuit, when the court had to determine whether, in fact, the Bank was entitled to judgment on the loan guarantee. Wang's due process rights were not violated because she was afforded multiple opportunities, between February and June 2008, to argue to the court why she should not be enjoined from selling her Omni Bank stock once judgment was entered. She did not avail herself of this opportunity before the court entered judgment.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

BOREN, P.J.

We concur:

ASHMANN-GERST, J.

CHAVEZ, J.